Congress in respect to the use of such funds for the completion of the Federal-aid highway programs; and

Whereas the administration has indicated that it will release some of the funds in question for obligation and expenditure during the present fiscal year, but will not release all of the funds which would otherwise have been available for the Federal-aid highway programs: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the decision to defer the expenditure of Federal-aid highway construction funds represents an unlawful attempt by the executive branch of Government to alter congressional directives with respect to the use of public funds and should be rescinded in toto, and that the States should be permitted to continue their programs of construction of Federal-aid highways in accordance with the schedules previously authorized by the Congress and as rapidly as available revenues permit.

The letter presented by Mr. BROOKE is as follows:

U.S. SENATE,
COMMITTEE ON BANKING
AND CURRENCY,
February 27, 1967.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate,
Washington, D.C.

DEAR SENATOR RANDOLPH: The announcement by the Bureau of Public Roads on November 23, 1966, that there would be an immediate cutback of $1.1 billion in the Federal-aid highway program for the fiscal year, ending on June 30, 1967, which cutback would affect approximately 25 percent of the new construction work which should be begun during fiscal year 1967, has provoked widespread, adverse comment throughout the country. These comments have been based primarily upon important public policy questions. It has been pointed out, for example, that the cost of highway construction has increased substantially during the past decade. Consequently, deferment of essential highway construction will inevitably result not only in substantial construction cost increases, but also in additional engineering, design and administrative expenses.

The ever increasing, tragic loss of life in automobile accidents could certainly be reduced by prompt completion of a modern and safe system of interstate highways. Contractors and other businessmen who have responded to the Federal Government's repeated requests to "stand by" and be prepared for sustained efforts so that the Federal-aid highway program could be completed on time will suffer severe financial reverses as a result of the delay in the construction schedule. Finally, since the inflationary pressures upon the nation's economy appear to be easing, the cutback now no longer serves a sound fiscal purpose; it could instead conceivably contribute to a recession, the potential for which has already been identified by a number of respected economists.

All of these factors are important. They ought to be fully explored. But I believe that a more fundamental issue has yet to be considered; specifically, the legal justification—or lack thereof—of the cutback. I respectfully suggest that the cutback in question is one which can only be imposed by Congressional action; it is *not* a matter which may lawfully be made the subject of an administrator's order.

As Attorney General of the Commonwealth of Massachusetts from 1963 to 1966, I had frequent occasion to consider the Federal-aid highway program statutes and to advise the State departments and agencies with respect to their implementation. It is my belief that the legal effect of these statutes is such that the directives contained therein can be altered only by the Congress, and that accordingly the cutback announced on November 23, 1966 is unlawful and should be rescinded.

The Federal-Aid Highway Act of 1956 related both to the Federal-aid primary and Federal-aid secondary systems (as well as to extensions of these systems within urban areas), and to the National Sytem of Interstate and Defense Highways, usually referred to as the "Interstate System." The Act briefly treats the questions of apportionment and expenditure with respect to the primary and secondary systems, a subject treated more fully below. It then proceeds to determine the future of the Interstate System.

The language used by the Congress in 1956 with respect to completion of the Interstate System is clear. There is no doubt as to what the Congress intended.

"It is hereby declared to be essential to the national interest to provide for the early completion of the 'National System of Interstate Highways,' as authorized and designated in accordance with section 7 of the Federal-Aid Highway Act of 1944 (58 Stat. 838). *It is the intent of the Congress that the Interstate System be completed as nearly as practicable over a thirteen-year* (now fifteen-year as a result of an amendment effected by Pub. L. 88-423) *period and that the entire system in all the states be brought to simultaneous completion.*" (emphasis supplied). *Federal-Aid Highway Act of 1956*, Title I, S108(a).

Thus, legislative intent was not left to conjecture. The statute speaks in terms of legislative intent, providing specifically that it was the will of the United States Congress that the Interstate System be completed by a certain year (now determined to be 1971). All of the provisions of the 1956 act, as well as subsequent amendments to it, must be interpreted in accordance with this statement of intention.

The passage from S108(a) which is quoted above is not an isolated declaration of intent. The desire of the Congress that the construction of the Interstate System be accelerated and completed by a specified date is reflected throughout the 1956 Act. Section 108(b), which authorized the appropriation of sums for Interstate System construction for the fiscal years 1957 through 1969, indicates that the early authorization is "for the purpose of *expediting* the construction, reconstruction, or improvement, inclusive of necessary bridges and tunnels, of the Interstate System, including extensions thereof through urban areas, designated in accordance with the provisions of section 7 of the Federal-Aid Highway Act of 1944 (58 Stat. 838) . . . (emphasis supplied)". The size of the amounts authorized by S108(b), which amounts range from $1 billion to $2.9 billion per fiscal year for the period from 1957 to 1969, dramatized the fact that the Congress had thought this matter through. Congress deliberately gave top priority to the speedy completion of the Interstate System.

There are further indications in the statute that Congress wanted and expected maximum speed with respect to construction of the highways in question. Under certain conditions, states are permitted to construct portions of the Interstate System in advance of specific apportionment of funds to them; such states would subsequently be reimbursed for the amounts expended upon such construction when the necessary funds were apportioned by the Secretary of Commerce. Thus the Act provides for possible further acceleration of the highway program by individual states (see S108(h)). Still another indication of the speed desired by Congress appears in S110 which relates to the advance acquisition of rights-of-way for the Interstate System. Section 110(a) provides for the early availability of funds for such acquisitions "for the purpose of facilitating the acquisition of rights-of-way on any of the Federal-Aid Highway systems, including the Interstate System, in the most expeditious and economical manner. . . ."

It is therefore obvious that the Congress in 1956 expected that the funds authorized to be appropriated by S108(b) would be used for the purpose of early completion of the Interstate System. The 1956 Federal-Aid Highway Act is replete with references to the importance of the systems referred to therein and to the need for their speedy construction. Nothing has been added to the Act in the intervening period which would in any way indicate that the intentions so clearly expressed in 1956 have been altered. The Act read as a whole leaves no doubt that the Congress intended—*and still intends*—that the funds should be used to complete the various construction programs within the time limits specified.

The statutory provisions set forth above show Congress' intent. A reading of the statute demonstrates that the use of the authorized funds is not subject to administrative fiat. The act is not discretionary. The mandate of Congress should be carried out.

There are other significant sections of the 1956 Act which impose clear and unmistakable requirements with respect to the amounts in question. Congress has not only set forth its general intention that the highway systems be speedily completed; it has also directed with great specificity how each dollar of the authorized amounts is to be handled.

The statute carefully sets forth, for example, how the funds in question are to be apportioned among the various states. Apportionments relating to the Federal-Aid primary and secondary highway systems are to be calculated in accordance with the formulas appearing in Section 4 of the Federal-Aid Highway Act of 1944 (See S102(a)(2)). Apportionments for the Interstate System are governed by S108 (c) and (d), wherein the Congress set forth further specific directions as to assignment of the authorized amounts to the states. Section 108(d) requires continuous re-estimates by the Secretary of Commerce of the cost of completion of the Interstate System, so that Congress may from time to time re-evaluate the distribution formulas.

The cutback order of November 23, 1966, alters the apportionment formulas carefully developed by Congress. There is no provision in the statute which provides for a suspension insofar as financial awards to the states is concerned. Such suspensions, in fact, directly and adversely affect the careful apportionment formulas which Congress has enacted. Congress itself has included in the statute machinery under which the program will be continually re-evaluated. But the re-evaluation must be done and decided by the Congress, not by the Executive branch of government. Congress would hardly have developed the distribution formulas at all had it anticipated that unnamed administrators would be free to apply them or not as they chose. I believe it is clear simply from the existence of the formulas that Congress intended the formulas to be applied from year to year (within the time period of the programs) and not to be subject to executive or administrative orders which would result in even the temporary suspension of their use.

But even this point has not been left to conjecture. The Federal-Aid Highway Act of 1956 contains specific directions with respect to the availability of highway funds for expenditure by the states. Section 108(b) provides, with respect to the Interstate System:

"Any sums apportioned to any State under the provisions of this section shall be available for expenditure in that State *for two years* after the close of the fiscal year for which such sums are authorized . . ." (emphasis supplied).

The section further provides that such funds shall be deemed to be expended if

they are covered by formal agreements with the Secretary of Commerce for the construction, reconstruction or improvement of specific projects.

Similar language appears in the section of the 1956 Act relating to the Federal-aid primary and secondary highway systems (See S102 (b)). These provisions are couched in mandatory terms. It was obviously the intention of Congress that apportioned funds be available to the states for a period of two years from the close of the fiscal year for which they are authorized. Such an additional period provides time for sober and considered decision-making relative to the use of the amounts authorized. The period of availability can be altered in one way—and in one way only—by legislative action. Thus, the so-called "freeze" place upon authorized amounts which have not been obligated by the states is directly in conflict with statutory provisions which identify a specific time in which the funds may be used. The "freeze" is accordingly invalid. Likewise, the announced cutback in present authorizations further conflicts with the legislative apportionment and availability scheme. It too is invalid.

The statute does set forth specific conditions under which authorized funds may "lapse" and no longer remain available to be obligated by a particular state. Section 102(b) provides in part, with respect to the primary and secondary systems:

"Any sums apportioned to any State under this section shall be available for expenditure in that State for two years after the close of the fiscal year for which such sums are authorized, *and any amounts so apportioned remaining unexpended at the end of such period shall lapse. . . .*" (emphasis supplied).

Section 108(g) provides in part, with respect to the Interstate System: "Any amount apportioned to the states under the provisions of this section unexpended at the end of the period during which it is available for expenditure under the terms of subsection (f) of this section shall lapse, and shall immediately be reapportioned among the other states in accordance with the provisions of subsection (d) of this section. . . ."

These provisions set forth the sole grounds for the lapse of funds which have been apportioned. Had Congress envisioned or intended other reasons for lapse, it would certainly have referred to them. Notwithstanding the unmistakable language of the act the order "freezing" authorized but unobligated funds seeks to create a new ground for lapse, one clearly never contemplated by the Congress. Accordingly, it must be concluded that the "freeze" contradicts the lapse provisions of the 1956 Act, and is consequently unlawful. (It is interesting to note that section 108(g) provides that Interstate System funds which lapse are to be immediately re-apportioned among the other states, a further indication that these funds have been "earmarked" for highway construction and for no other purpose.

The funds which are to be apportioned and expended for highway construction are raised by taxes and fees imposed upon those who make use of the highways. Although the income derived from such taxes and fees has frequently been referred to as being held in "trust" for the benefit of the highway program, a "trust" in the normal legal sense has not been created. It would of course be within the prerogative of Congress to re-designate the use to which such income should be put. But it has not done so. Given the clear indications contained in the Federal-Aid Highway Act of 1956 that the funds in question are to be used solely for highway construction, it is logical that such amounts be raised by levying upon those persons who will most directly benefit from improved highways. However, if the objective of accelerated highway construction is not pursued, the logic of the related revenue-raising measures disappears. The Administration's cutback order has destroyed the logic of a perfectly sound Congressional plan.

A careful examination of amendments to the 1956 Act reveals that the Congressional intention and mandate set forth eleven years ago and implemented throughout the intervening period remains intact. What Congress desired in 1956 Congress still desires—an interstate highway program completed as speedily as possible. To this end, Congress has clearly directed how and when funds are to be spent. Alteration or suspension of such directives is beyond the lawful authority of the Executive branch of government.

If the Administration believes that it is esesntial to the economy that the highway program be delayed, it should make recommendations to that effect to the Congress. The ultimate decision as to retention or rejection of the present statutory highway construction procedures can only be made by the Legislative branch. The Administration's cutback order—which is unsound from a public policy viewpoint as well since it discriminates against states such as the Commonwealth of Massachusetts which have moved soberly and carefully and therefore have yet to obligate all available Federal funds—cannot lawfully do the work which requires action by the Congress.

I respectfully request the Committee to take full note of the declarations of policy which appear in S116 (a) and (b) of the 1956 Act:

"It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including the Interstate System, since many of such highways, or portions thereof, are in fact, inadequate to meet the needs of local and interstate commerce, the national and the civil defense. . . . It is further declared that one of the most important objectives of this Act is the prompt completion of the Interstate System. . . ."

The appropriation of money, and decision with respect to its use, are the responsibility of Congress. This responsibility cannot be abdicated by Congress, nor should it be usurped by the Executive branch. Nor can the courts be relied upon to protect that Congressional prerogative, for litigation begun by the states to restore frozen or cutback funds would be long and complex, and would involve perhaps insuperable "standing" obstacles to the success of the petitioners.

It must be the Congress which calls the Executive branch to account on this matter. I hope that this Committee will examine the important legal and Constitutional ramifications which the Administration's actions have raised. I hope that this Committee will do more than that for much more than the Intertsate Highway System is at issue here.

I am, finally, very grateful for the opportunity to present my views.

Very truly yours,

EDWARD W. BROOKE,
U.S. Senator.

THE 175TH ANNIVERSARY OF THE ADMISSION OF THE COMMONWEALTH OF KENTUCKY INTO THE UNION

Mr. COOPER. Mr. President, on June 1, 1967, the Commonwealth of Kentucky will celebrate the 175th anniversary of its admission to the Union.

The Commonwealth and its people have a long history of dedication to the principles on which this Republic was founded.

The people who settled Kentucky were proud that on February 4, 1791, President George Washington signed the act of Congress that enabled Kentucky to be admitted to the Union.

In 1792, after the adoption of a State constitution and the election of a Governor and a legislature, the Commonwealth of Kentucky was formally admitted to the Union as the 15th State.

The people of the Commonwealth of Kentucky have worked to develop their resources and they have been ever faithful to the Union in time of war and in time of peace.

The Governor of the Commonwealth of Kentucky, the Honorable Edward T. Breathitt, has proclaimed the year 1967 as the 175th Anniversary Year of Kentucky and he has charged the Kentucky Historical Society with executing appropriate programs memorializing this historic occasion.

In accordance with the desire of the citizens of Kentucky to observe this anniversary, it would be appropriate for the Congress to recognize this observance as proclaimed by the Governor.

For myself and my distinguished colleague, Senator MORTON, who is a seventh generation Kentuckian, descended from its first settler, Dr. Thomas Walker, I send to the desk a concurrent resolution expressing the commendation of Congress and extending the greetings of the Congress to the citizens of Kentucky on the 175th anniversary of its admission to the Union.

The PRESIDING OFFICER. The concurrent resolution will be received and appropriately referred.

The concurrent resolution (S. Con. Res. 15) was referred to the Committee on the Judiciary, as follows:

S. CON. RES. 15

A concurrent resolution to recognize the one-hundred and seventy-fifth anniversary of the admission of the Commonwealth of Kentucky to the Union

Whereas the Commonwealth of Kentucky proudly entered the Federal Union as the fifteenth State on the 1st day of June 1792; and

Whereas from that day, the people of Kentucky have joined together to maintain, defend, and enlarge, the free institutions upon which our Nation is founded, and to develop the resources of the Commonwealth for the benefit of its people and the Nation; and

Whereas generations of its citizens have renewed their historic dedication to the principles of the Republic: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress recognize and commend the celebration of the one-hundred and seventy-fifth anniversary of the admission of the Commonwealth of Kentucky to the Union; and be it further

Resolved, That the Congress extends its greetings and felicitations to the citizens of Kentucky upon the occasion of the celebration of this anniversary.

AUTHORIZATION FOR COMMITTEE ON FOREIGN RELATIONS TO SUBMIT A REPORT ON THE SOVIET CONSULAR TREATY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations have until midnight tonight to file a report on the Consular Convention with the Soviet Union and that the report be printed together with minority and individual views.

The PRESIDING OFFICER. Without objection, it is so ordered.